STATE OF MICHIGAN

COURT OF APPEALS

CITY OF DETROIT DOWNTOWN DEVELOPMENT AUTHORITY,

Petitioner-Appellee,

v

US OUTDOOR ADVERTISING INC.,

Respondent-Appellant,

and

CITY OF DETROIT BOARD OF ZONING APPEALS,

Respondent-Appellee.

UNPUBLISHED
April 12, 2007

No. 262311
Wayne Circuit Court
LC No. 04-439264-AV

Before: Hoekstra, P.J., and Meter and Donofrio, JJ.

PER CURIAM.

US Outdoor Advertising, Inc. (US Outdoor), appeals by leave granted from the circuit court's order affirming in part and reversing in part an earlier order of the Detroit Board of Zoning Appeals (BZA) that granted US Outdoor's application for a zoning variance to hang advertisements called "super graphics" on two selected properties in Detroit. Because we cannot conclude that the Detroit Downtown Development Authority (DDA) has standing to file an appeal in the circuit court challenging a decision of the BZA, we do not reach the substantive issue of the BZA's decisions regarding the variance for the property located at 124 Cadillac Square. We dismiss this appeal for lack of standing.

US Outdoor leased or intended to lease advertising space on five buildings[1] in the Campus Martius area of downtown Detroit. It sought to install "super graphic" ads[2] on the

[1] The buildings are located at 10/11 Witherell, 28 West Adams, 111 Cadillac Square, 124 Cadillac Square, and 1001 Woodward.

[2] Super graphic ads are colorful, dramatic, huge, artistic advertisements often created on a vinyl
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various buildings. This case specifically involves proposed signs on two of the buildings: 10/11 Witherell and 124 Cadillac Square. The well-known whale mural is currently on the Witherell building. Zoning ordinances regulate the location of ads near public parks or historic districts as well as the size of advertising signs. After the city's Buildings & Safety Engineering Department denied US Outdoor's request for permits pursuant to these ordinances, US Outdoor appealed to the BZA. The DDA owned a parking garage within 300 feet of the building at 1001 Woodward and received notice of US Outdoor's request for a variance with respect to that building. The DDA opposed US Outdoor's advertising plans for all five buildings.

At the BZA hearing on the matter, US Outdoor spoke of its plans to lease space on the buildings in question, the building owners' support for its plans, the nature of the ads, and its placement of similar ads in other cities. US Outdoor extolled the virtue of the ads stating that the ads: enhance the surrounding area with artwork, draw people downtown, promote sales and service, and generate tax dollars. An agent of the DDA spoke in opposition to US Outdoor's plans asserting the ads were detrimental to the overall redevelopment of the Campus Martius area and could affect DDA's ability to draw tenants for its garage.[3] After taking the matter under advisement, the BZA reconvened and granted the requests regarding the buildings at 10/11 Witherell and 124 Cadillac Square, but denied the requests regarding the buildings at 111 Cadillac Square and 28 West Adams.[4]

The DDA appealed the decision to the circuit court asserting that the BZA's decision was not supported by competent, material, and substantial evidence on the whole record, and thus the BZA unreasonably exercised its discretion. US Outdoor filed a motion to dismiss on the ground that the DDA lacked standing to appeal the BZA's decision. The DDA opposed the motion to dismiss. The court heard arguments on the motion to dismiss for lack of jurisdiction, as well as on the BZA appeal. The court first ruled that the DDA had standing relying on its reading of the former MCL 125.585(11),[5] and then ruled that the BZA acted properly regarding the Witherell building, but abused its discretion with respect to 124 Cadillac Square. This appeal followed.

US Outdoor argues that the trial court erred when it ruled that the DDA had standing to appeal the BZA's orders in the circuit court. "Whether a party has standing is a question of law that we review de novo." *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 612; 684 NW2d 800 (2004). Generally, the doctrine of standing requires "the existence of a party's interest in the outcome of litigation that will ensure sincere and vigorous advocacy." *House Speaker v State Admin Bd*, 441 Mich 547, 554; 495 NW2d 539 (1993). In order to

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mesh application that adheres to the side of a building either by an adhesive or through the use of grommets. Occasionally, artists hand paint the super graphic image.

[3] Owners of the buildings or owners' agents spoke in favor of US Outdoor's plans, as did some citizens. But an owner of the Dime Building, an agent of Compuware, and a representative of the Task Force on Building and Land Use Zoning opposed the signs, as did a citizen.

[4] Although not relevant to this appeal, it is unclear from the record what became of US Outdoor's request for a variance at 1001 Woodward.

[5] MCL 125.585 was repealed effective July 1, 2006 but is still applicable in the present case. See MCL 125.3702(1)(a) and (2).

establish standing, a plaintiff must establish three elements: (1) that the plaintiff has suffered a concrete "injury in fact"; (2) the existence of "a causal connection between the injury and conduct complained of" that is "fairly . . . trace[able] to the challenged action of the defendant"; and (3) that the injury will likely be "redressed by a favorable decision." *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 739; 629 NW2d 900 (2001) (internal citations and quotations omitted).

Our review of the record reveals that the DDA has failed to present evidence that it has suffered a concrete injury in fact fairly traceable to the BZA's decision regarding US Outdoor's variance requests. Although the DDA argues that the super graphics will harm its overall development plan of the downtown area, the DDA's opinion is unsupported by evidence. Such conjecture is insufficient to satisfy the requisite "concrete," "injury in fact" required by *Lee, supra* at 739. Thus, the DDA lacks constitutional standing because it has not claimed an actual, particularized injury. But the DDA argues that because it has an "interest affected by the zoning ordinance," it has standing under MCL 125.585(11) regardless of whether it can satisfy the elements required by *Lee, supra* at 739. The question then becomes whether former MCL 125.585(11) was sufficient, standing alone, to confer standing on the DDA.

This Court recently addressed whether the Legislature can confer standing by statute alone. *Michigan Educ Ass'n v Superintendent of Public Instruction*, 272 Mich App 1, 7-13; 724 NW2d 478 (2006). The *Michigan Educ* Ass'n Court engaged in a comprehensive analysis of applicable Michigan precedent including *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286; 715 NW2d 846 (2006); *Nat'l Wildlife Federation, supra;* and *Michigan Citizens for Water Conservation v Nestle Waters North America Inc*, 269 Mich App 25; 709 NW2d 174 (2005). *Michigan Educ Ass'n, supra* at 7-13. After scrutinizing these relevant cases, the *Michigan Educ Ass'n* Court held that all plaintiffs must establish the constitutional requirements for standing in order to bring a cause of action, and concomitantly, statutes and rules cannot confer standing in the absence of the constitutionally required elements for standing. *Id.*, at 12-13. Applying the holding of *Michigan Educ Ass'n* to the case at bar, in the absence of the constitutionally required elements of standing, former MCL 125.585(11) is not sufficient to confer standing to the DDA.

The dissent believes that in light of "unique circumstances" of this case, the DDA's ability to satisfy the "interested party standard" in MCL 125.585(11) is sufficient to confer standing to the DDA, without regard for the judicial elements set forth by *Lee, supra.* The dissenting judge differentiates the DDA's status as a statutory creation, MCL 125.1651 *et seq.*, from that of an ordinary citizen, and points to the DDA's development plan for the downtown Detroit area as well as $65 million in investments to the affected areas. We cannot agree that "unique circumstances" are present that transform the DDA into a "different type of animal" than an average citizen, and that transformation, somehow trumps long-standing fundamental legal principles requiring a "genuine case of controversy between the parties, one in which there is a real, not a hypothetical, dispute." *Michigan Educ Ass'n, supra* at 7, quoting *Nat'l Wildlife Federation, supra* at 615, quoting *Muskrat v United States*, 219 US 346; 31 S Ct 250; 55 L Ed 246 (1911). Litigants, no matter what "type of animal"—individual or entity, small or large, public or private—must satisfy the judicial test for standing. We agree with Justice Markman's insistence that litigants satisfy the judicial test for standing, and with his concerns that:

> If the Legislature were permitted at its discretion to confer jurisdiction upon this Court unmoored from any genuine case or controversy, this Court would be

> transformed in character and empowered to decide matters that have historically been within the purview of the Governor and the executive branch. If there is dispute over the manner in which the Governor is enforcing or administering a law, such dispute, in the normal course, must be resolved through the executive process. If there are citizens who believe the Governor is wrongfully or inadequately enforcing or administering the state's consumer protection or occupational safety or worker's compensation or revenue laws, it is their right to petition or lobby the Governor in order to alter these policies. It is also the right of such citizens to petition or lobby the Legislature in order to cause them to alter these laws. Finally, of course, it is the right of citizens to participate in the channels of public debate, and in the political processes, in order to influence public policies, or to place in public office persons who are more accommodating to their points of view. Unless there is an individual who has personally been injured by the Governor's enforcement or administration of these laws, it is not normally the role of the judicial branch to monitor the work of the executive and determine whether it is carrying out its responsibilities in an acceptable fashion. That the Legislature-perhaps even with the acquiescence of the executive-has purported to impose this role upon the judicial branch does not alter this constitutional reality. [*Nat'l Wildlife Federation, supra* at 622-623.]

For all of these reasons, we hold that MCL 125.585(11), standing alone, is insufficient to confer standing to the DDA in this case. Further, to the extent that former MCL 125.585(11) confers standing broader than the limits imposed by Michigan's constitution, it is unconstitutional and does not confer standing on the DDA to file an appeal in the circuit court challenging a decision of the BZA. Because we cannot conclude that the DDA has standing to file an appeal in the circuit court challenging a decision of the BZA, we do not reach the substantive issue of the BZA's decisions regarding the variance for the property located at 124 Cadillac Square.

Dismissed.

/s/ Joel P. Hoekstra
/s/ Pat M. Donofrio